

No. 1764 CUTTACK, MONDAY, DECEMBER 13, 2004 / MARGASIRA 22, 1926

The 4th December 2004

.. Second Party–Workman himself

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 9740-LE., dated the 12th August 2002 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

"Whether the action of the management i. e. Regional Marketing Officer, Angul in terminating the services of Shri Bhikari Ch. Bisoi, workman with effect from the 1st December 2000 is legal or justified ? If not, what relief the workman is entitled to ?"

3. Stating in a little detail the case of the workman, Bhikari Ch. Bisoi is that he was engaged as Peon by the Regional Marketing Officer, Angul (in short the management) with effect from the 15th July 1997 to the 30th September 1997. Subsequently he was engaged as Sweeper from the 1st October 1997 and continued to work as such till the date of his termination on the 30th November 2000. According to the workman although he had rendered continuous uninterrupted service with effect from the 15th July 1997 till the date of his termination on the 30th November 2000 with much sincerity, devotion and to the utmost satisfaction of the authority but the management without any rhyme or reason had illegally terminated him from service with effect from the 30th November 2000 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). The further case of the workman is that he has not received his wages from the 1st February 1999 to the 30th November 2000 to the tune of Rs. 18,300 as per the Minimum Wages Act. While challenging the legality and justifiability of the action of the management in terminating the services with effect from the 1st December 2000, the workman concerned has now prayed for his reinstatement in service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, neither entered its appearance nor filed any written statement despite the notice as a result the management was set *ex parte*. The *ex parte* hearing commenced on the 8th September 2004.

5. During *ex parte* hearing the workman has clearly and categorically supported and corroborated the averments already averred in his statement of claim. In his evidence, he has clearly stated that he was appointed as Peon vide office order, dated the 10th July 1997 marked as Ext. 1 with effect from the 15th July 1997. He continued as such till the 30th September 1997. Thereafter from the 1st October 1997 he was engaged as Sweeper under the management and continued to work as such till the date of his termination on the 1st December 2000. He has categorically stated that the management without any rhyme or reason had illegally terminated him from service without giving any prior notice or notice pay and retrenchment compensation. Against such illegal termination he raised a dispute before the Assistant Labour Officer, Angul but the conciliation proceeding initiated by him ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. It is also in his evidence that he was not paid his wages from February, 1999 till the date of his termination in spite of his several approach for which he had filed M. J. C. 13/2001 in the Court of the S. D. J. M., Angul and in said Misc. case the management was directed to make payment of the arrear wages for the aforesaid period to the tune of Rs. 18,300 vide Ext. 2. He has now prayed for his reinstatement in service with back wages. No rebuttal evidence has been adduced by the management to controvert

the evidence of the workman. In absence of any rebuttal evidence, absolutely I find no reason to disbelieve the unchallenged testimony of the workman. Rather it is abundantly clear that he had rendered continuous service with effect from the 15th July 1997 till the date of his termination on the 1st December 2000 and the management had not given any notice or notice pay and retrenchment compensation to him while terminating his services, which in my view are in complete violation of the mandatory provisions of Section 25-F of the Act. It has been settled in catena of decisions that provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. On perusal of the evidence of the workman it is seen that he has successfully proved the fact with regard to his continuous service having been rendered by him in the establishment of the management with effect from the 15th July 1997 till the date of his termination on the 1st December 2000. The evidence of the workman in the above context has nowhere been challenged by the management. Therefore in absence of any rebuttal evidence, I find no reason to disbelieve the unchallenged testimony of the workman. In such premises, the case of the workman has to be accepted. After carefully examining the evidence led by the workman being coupled with the proved documents, I am of the view that the action of the management in terminating the services of the workman with effect from the 1st December 2000 is illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

6. The perusal of the schedule of reference clearly reveals that the workman has been terminated from service with effect from the 1st December 2000 and there is no material before me to come to the conclusion that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such circumstances, the workman is entitled to be reinstated in service, but on the facts and circumstances of the present case, I am of the view that as the workman had not worked with effect from the date of his termination, he is entitled to get a lump sum compensation to the tune of Rs. 2,000 towards his back wages.

7. Hence it is ordered :

That the action of the management i. e. Regional Marketing Officer, Angul in terminating the services of Shri Bhikari Charan Bisoi with effect from the 1st December 2000 is neither legal nor justified. The workman, Shri Bisoi is entitled to be reinstated in service with a lump sum compensation of Rs. 2,000 (Rupees two thousand) only towards back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me

P. K. SAHOO
28-10-2004
Presiding Officer
Labour Court, Bhubaneswar

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By order of the Governor
D. MISHRA
Under-Secretary to Government